STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
July 29, 2010

In the Matter of PEMBERTON, Minors.

No. 293568
Macomb Circuit Court
Juvenile Division
LC No. 2008-000790-NA;
2008-000791-NA

Before: SHAPIRO, P.J., and SAAD and SERVITTO, JJ.

PER CURIAM.

Respondent, F. Throneberry, appeals as of right from an order terminating his parental rights to the minor children pursuant to MCL 712A.19b(3)(g) and (j). Because clear and convincing evidence supports a termination of respondent's parental rights and the trial court did not improperly rely on expert testimony, we affirm.

This Court reviews decisions terminating parental rights for clear error. MCR 3.977(J). Clear error has been defined as a decision that strikes this Court as more than just maybe or probably wrong. *In re Trejo*, 462 Mich 341, 357; 612 NW2d 407 (2000).

MCL 712A.19b(3)(g) allows for termination when:

> The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

Here, respondent suffered a closed-head injury and has long resided in a group home. Both children were born while respondent was a resident at an assisted living facility, such that respondent has never resided with the children. The children have been in the care of their maternal grandmother more or less since birth, and the grandmother would take the children to visit respondent one hour per week.

It was less respondent's physical handicaps than his psychological and emotional conditions that served as a basis for termination of his parental rights. Respondent was cognitively impaired and had numerous instances of inappropriate behavior. He was accused of sexually acting out on more than one occasion. Because of his poor judgment and cognitive impairments, respondent was under a guardianship and required access to 24-hour assistance with daily activities, including financial help, cleaning, and transportation. Although there were

many witnesses who testified positively in his favor, none of them believed that respondent would ever be able to care for the children without supervision. Even respondent admitted that he would always need assistance. Therefore, without regard to fault, respondent simply could not provide the children with proper care or custody. There was no likelihood that he would be able to do so in the near future. In fact, the evidence demonstrated that, because of his injury, respondent was prone to deterioration as he ages. Respondent thus failed to provide proper care or custody for the children and there is no reasonable expectation that he will be able to at any time soon. See MCL 712A.19b(3)(g). This same evidence forms the basis for termination under subsection 19b(3)(j), given that respondent was also not in a position to keep the children safe. For example, he admittedly disregarded instructions that he not carry the children (due to his physical limitations). Based upon the above, the trial court did not clearly err in finding that the statutory grounds for termination of respondent's parental rights were established by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000).

Having found the statutory grounds for termination proven by clear and convincing evidence, the trial court then had to address whether termination of respondent's parental rights was in the children's best interests. MCL 712A.19b(5) provides, "If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." In this matter, respondent clearly loved his children. He visited with the eldest child whenever possible. Regardless of the circumstances, respondent simply did not want to miss a chance to be with the eldest child. Still, because of the eldest child's young age and the infrequency with which he saw respondent, it could not be definitively said that any appreciable bond existed. Respondent has never had any contact with the younger child. Where it was clear that respondent was never going to be in a position to care for the children, a permanent solution was needed.

Respondent next argues that the trial court erred in relying upon the testimony of Dr. Karle, a neuropsychologist. However, respondent has waived the issue for appellate review by not only failing to object to Karle's qualifications (see, e.g., *Craig v Oakwood Hosp*, 471 Mich 67, 82; 684 NW2d 296 (2004), but also specifically advocating her expertise. Respondent's attorney questioned Karle about whether she thought the children would benefit from continued contact with respondent. When petitioner objected with regard to foundation, respondent's attorney replied, "I'm asking for a general opinion. She's highly qualified with respect to neurology, psychology. I think that she's in a position to be able to answer and give her opinion." A party is not entitled to appellate relief on the basis of an evidentiary error to which he contributed by plan or negligence. *People v Gonzalez*, 256 Mich App 212, 224; 663 NW2d 499 (2003). Karle also testified about her extensive educational background and work history. Respondent's attempt to attack Karle's qualifications on appeal is without merit.

Affirmed.

/s/ Douglas B. Shapiro
/s/ Henry William Saad
/s/ Deborah A. Servitto